

United States District Court



**REPORT
ON
MEDIATION**

2001

I. INTRODUCTION

2001 was a “maintenance” year. There were no major revisions to the mediation program, and no major developments. The program simply continued. Some of the previous revisions to the program are not yet generally known among the practicing bar, as reflected in their responses to inquiries about mediation. Some of our first “approved” mediators have been renewed in this, the sixth year of the program’s existence. Some, however, have chosen not to renew, and so, with some mediators having moved out of Nebraska, the ranks are shrinking a bit. At the close of 2001 there were 36 approved mediators on the list.

Court's Staff

Kathy Griess continues to be the court's ADR Coordinator. She monitors the referral process and the progress of mediated cases. She also administers the application process for mediators, evaluations, statistics, and the surveys utilized in this report. Magistrate Judge Piester continues as the court's ADR Administrator.

Training

For the first time, the annual workshop for federally approved mediators was not held in 2001. For whatever reason, less than half of the approved mediators registered to attend, and that number did not justify the expense of having it. This was, of course, disappointing, as it is a good opportunity for attorney-mediators to meet and discuss ideas, approaches, and experiences, in addition to receiving a “free” half-day’s worth of continuing mediation education.

Web Site

The mediation website is up and running. It contains much information about the court’s mediation program. It contains a general description of the program, the Mediation Plan, the requirements for approval, a list of the names and addresses of the approved mediators, and a separate listing by community with a web page for each mediator. These pages contain descriptions of the mediator’s experience, training, affiliations, the kinds of cases he or she will mediate, and the usual fees charged, as well as other information such as how to arrange mediations. As more information is received about each mediator through the renewal process and otherwise, that mediator’s separate page will be updated to be an accurate presentation of their qualifications.

II. STATISTICS

The following pages are the "raw" quarterly and annual statistics for calendar year 2001, followed by additional information.

Period: January - March 2001

	Mediator Approved	Mediator Not Approved	Total
Referrals Pending Beginning of Period	1	7	8
Mediation Orders Entered	10	6	16
Mediation Orders Withdrawn	0	1	1
Settled Prior	0	0	0
Referrals Pending End of Period	4	8	12
Total Actually Mediated (Closures)	7	4	11
Cases Referred to Mediation by Division	Mediator Approved	Mediator Not Approved	Total
Omaha	3	3	6
Lincoln	6	3	9
North Platte	1	0	1
Total	10	6	16
Outcome of Mediated Cases	Mediator Approved	Mediator Not Approved	Total
Full Agreement	5	2	7
Partial Agreement	0	0	0
No Agreement	2	2	4
Total	7	4	11
Summary of No\Partial Agreement, After Closure	Mediator Approved	Mediator Not Approved	Total
Trial Settings Pending Beginning of Reporting Period	2	6	8
Settled	1	1	2
Judgment Entered Without Trial or Settlement	0	0	0
Transfer to Bankruptcy	0	0	0
Trials Held During Reporting Period	1	2	3
Trial Settings Pending at End of Reporting Period	2	5	7

Of the 4 cases that were mediated during the first quarter of 2001 and had no agreement, 3 cases remain pending for trial and 1 settled during the quarter. Of the 8 trial settings that were pending at the beginning of the reporting period, 1 case settled, 3 trials were held and 4 of those cases are still pending for trial at the end of the reporting period.

Period: April - June 2001

	Mediator Approved	Mediator Not Approved	Total
Referrals Pending Beginning of Period	4	8	12
Mediation Orders Entered	8	6	14
Mediation Orders Withdrawn	3	2	5
Settled Prior	1	0	1
Referrals Pending End of Period	3	6	9
Total Actually Mediated (Closures)	5	6	11
Cases Referred to Mediation by Division	Mediator Approved	Mediator Not Approved	Total
Omaha	2	1	3
Lincoln	6	5	11
North Platte	0	0	0
Total	8	6	14
Outcome of Mediated Cases	Mediator Approved	Mediator Not Approved	Total
Full Agreement	4	3	7
Partial Agreement	0	0	0
No Agreement	1	3	4
Total	5	6	11
Summary of No/Partial Agreement, After Closure	Mediator Approved	Mediator Not Approved	Total
Trial Settings Pending Beginning of Reporting Period	2	5	7
Settled	0	1	1
Judgment Entered Without Trial or Settlement	0	0	0
Transfer to Bankruptcy	0	0	0
Trials Held During Reporting Period	0	1	1
Trial Settings Pending at End of Reporting Period	3	6	9

Of the 4 cases that were mediated during the second quarter of 2001 and had no agreement, all 4 cases remain pending for trial. Of the 7 trial settings that were pending at the beginning of the reporting period, 1 case settled, 1 trial was held and 5 of those cases are still pending for trial at the end of the reporting period.

Period: July - September 2001

	Mediator Approved	Mediator Not Approved	Total
Referrals Pending Beginning of Period	3	6	9
Mediation Orders Entered	7	8	15
Mediation Orders Withdrawn	1	4	5
Settled Prior	0	1	1
Referrals Pending End of Period	5	1	6
Total Actually Mediated (Closures)	4	8	12
Cases Referred to Mediation by Division	Mediator Approved	Mediator Not Approved	Total
Omaha	2	1	3
Lincoln	5	7	12
North Platte	0	0	0
Total	7	8	15
Outcome of Mediated Cases	Mediator Approved	Mediator Not Approved	Total
Full Agreement	4	3	7
Partial Agreement	0	0	0
No Agreement	0	5	5
Total	4	8	12
Summary of No/Partial Agreement, After Closure	Mediator Approved	Mediator Not Approved	Total
Trial Settings Pending Beginning of Reporting Period	3	6	9
Settled	0	2	2
Judgment Entered Without Trial or Settlement	0	0	0
Transfer to Bankruptcy	0	0	0
Trials Held During Reporting Period	1	0	1
Trial Settings Pending at End of Reporting Period	2	9	11

Of the 5 cases that were mediated during the third quarter of 2001 and had no agreement, all 5 cases remain pending for trial. Of the 9 trial settings that were pending at the beginning of the reporting period, 2 cases settled, 1 trial was held and 6 of those cases remain pending for trial at the end of the reporting period.

Period: October - December 2001

	Mediator Approved	Mediator Not Approved	Total
Referrals Pending Beginning of Period	5	1	6
Mediation Orders Entered	9	9	18
Mediation Orders Withdrawn	0	0	0
Settled Prior	0	0	0
Referrals Pending End of Period	5	4	9
Total Actually Mediated (Closures)	9	6	15
Cases Referred to Mediation by Division	Mediator Approved	Mediator Not Approved	Total
Omaha	0	1	1
Lincoln	8	8	16
North Platte	1	0	1
Total	9	9	18
Outcome of Mediated Cases	Mediator Approved	Mediator Not Approved	Total
Full Agreement	5	5	10
Partial Agreement	0	0	0
No Agreement	4	1	5
Total	9	6	15
Summary of No/Partial Agreement, After Closure	Mediator Approved	Mediator Not Approved	Total
Trial Settings Pending Beginning of Reporting Period	2	9	11
Settled	1	3	4
Judgment Entered Without Trial or Settlement	0	0	0
Transfer to Bankruptcy	0	0	0
Trials Held During Reporting Period	0	0	0
Trial Settings Pending at End of Reporting Period	5	7	12

Of the 5 cases that were mediated during the fourth quarter of 2001 and had no agreement, all 5 cases remain pending for trial. Of the 11 trial settings that were pending at the beginning of the reporting period, 4 cases settled and 7 of those cases remain pending for trial at the end of the reporting period.

Period: January - December 2001

	Mediator Approved	Mediator Not Approved	Total
Referrals Pending Beginning of Period	1	7	8
Mediation Orders Entered	34	29	63
Mediation Orders Withdrawn	4	7	11
Settled Prior	1	1	2
Referrals Pending End of Period	5	4	9
Total Actually Mediated (Closures)	25	24	49
Cases Referred to Mediation by Division	Mediator Approved	Mediator Not Approved	Total
Omaha	7	6	13
Lincoln	25	23	48
North Platte	2	0	2
Total	34	29	63
Outcome of Mediated Cases	Mediator Approved	Mediator Not Approved	Total
Full Agreement	18	13	31
Partial Agreement	0	0	0
No Agreement	7	11	18
Total	25	24	49
Summary of No/Partial Agreement, After Closure	Mediator Approved	Mediator Not Approved	Total
Trial Settings Pending Beginning of Reporting Period	2	6	8
Settled	2	7	9
Judgment Entered Without Trial or Settlement	0	0	0
Transfer to Bankruptcy	0	0	0
Trials Held During Reporting Period	2	3	5
Trial Settings Pending at End of Reporting Period	5	7	12

FOLLOW-UP SURVEYS

Survey questionnaires were sent to counsel in the 9 cases (for the period January 1, 2001 through December 31, 2001) which did not settle at the mediations, but which DID settle before trial, to determine if the settlements occurred "because of" the mediation, "in spite of" the mediation, or if the mediation had "no impact" on settlement. Responses were received from 17 attorneys in 9 cases. Results are below:

TOTAL **RESPONSES**: 17

	"Because Of"	"In Spite Of"	"No Impact"	Total
APPROVED	0	0	4	4
NON-APPROVED	6	1	6	13
TOTAL	6	1	10	17

CASES REPORTED ON: 9

APPROVED	1	0	2	3
NON-APPROVED	3	0	3	6
TOTAL	4	0 ¹	5	9

It is commonly thought that even a "failed" mediation (that is, one that does not end in settlement "at the table") may spawn fruitful settlement discussions in the future. That is not necessarily true based on these limited numbers, as mediation was reported by the lawyers to have had "no effect" on settlement in five of the nine cases that settled later.

¹ There were three *responses* in this case. Two of the attorneys said the mediation had "no impact" on the settlement; the third said it settled "in spite of" the mediation. Therefore, the case was counted "no impact," reflecting the "majority" view.

III. OBSERVATIONS ON THE NUMBERS:

MEDIATION "CAUSED" SETTLEMENT IN 71% OF THE CASES MEDIATED:

Adding the cases settled at the mediations (31) and those later settled "because of" the mediation (4) yields a total of 35 of the 49 cases actually mediated (71%) were settled directly because of the mediation program. Calculated according to Approved/Non-Approved, the rates are: Approved: $19/25 = 76\%$; Non-Approved: $16/24 = 67\%$.

Effects of Mediation on Settlement, 2001:

	Cases Mediated	Settled AT Mediation	Settled Because of Mediation	Total Cases Settled	Effective Rate of Settlement
Approved	25	18	1	19	76%
Non-Approved	24	13	3	16	67%
Totals	49	31	4	35	71%

In addition, two cases were settled after the entry of the mediation reference order but before the scheduled mediation. It is not known what effect (if any) the impending mediation had on settlement in those cases, but it would not seem likely to have been negative. Finally, it should be noted that of the total of 49 cases mediated (including those pending Jan. 1, 2001), only five cases have been tried, and only twelve cases remained set for trial at the end of the period.

There was one case mediated in 2001 in which counsel reported that settlement occurred "in spite of" the mediation. Obviously, this is a concern, for the mediation should not "harm" the settlement horizon for any dispute. Because this was in a mediation held by a "non-approved" mediator, however, the court has no knowledge of what went wrong in this mediation, nor whether it can be addressed with additional training.

Settlements as comparison of mediators: The rates of settlement for 2001 are shown below, divided according to whether the mediator was approved by the court or not.

	Approved	Non-Approved	Totals
MRO's Entered	34	29	63
Cases Mediated	25	24	49
Cases Settled In Mediation	18 72%	13 54%	31 63%
Effective Settlement Rate	76%	67%	71%

COMPARISONS TO PRIOR PERIODS:

Number of Cases Referred: Roughly the same number of mediation reference orders were entered in 2001 as in prior years. However, it should be noted that there are more mediations taking place than the court orders. Litigants sometimes simply contact a mediator, either an approved mediator or one not approved by the court, and arrange a mediation without the court's involvement. Thus, these numbers are not an accurate reflection of the total mediation activity in federal court cases in Nebraska. Efforts are underway to improve this reporting.

Geography: Most of the mediation reference orders are continuing to emanate from Lincoln. This has been consistent over the course of the program (1998: Of 65 orders, 44 were from Lincoln, 11 from Omaha, and 10 for North Platte cases; 1999: Of 67 orders, 41 were from Lincoln, 20 from Omaha, and 6 for North Platte cases; 2000: Of 63 orders, 39 were from Lincoln, 17 from Omaha and 7 for North Platte cases; 2001: Of 63 orders, 48 were from Lincoln, 13 from Omaha and 3 for North Platte cases.).

Referrals to Non-approved Mediators: The number of referrals to non-approved mediators continued at roughly the same rate relative to the total number of referrals. (35/65 in 1998; 41/67 in 1999; 39/63 in 2000; 29/63 in 2001). Again, it is believed that there were more actual mediations of federal cases initiated by the litigants' direct contact with mediators than are recorded by these numbers.

IV. EVALUATIONS

After each mediation the participants were asked to complete an evaluation form, judging various aspects of their mediation from 1 (Excellent!) to 5 (Terrible!). (Copies of the evaluation forms are in the Appendix). They were asked to mail it back to the court. Averaged responses to some of the questions are set forth in chart form below.

EVALUATION QUESTION	*PTY-APP	PTY-NON	ATTY APP	ATTY NON	OVRL AVE
"How was the mediator at remaining neutral?"	1.48	1.33	1.39	1.36	1.39
"During the mediation session, how was the mediator-- ...at giving you opportunities to express your views?"	1.41	1.33	1.39	1.32	1.36
"...at understanding your/your client's interests and needs in the dispute?"	1.59	1.42	1.54	1.33	1.47
"...at allocating appropriate time for the mediation?"	1.84	1.33	1.73	1.45	1.59
"...at treating you with fairness and respect?"	1.30	1.17	1.21	1.18	1.22
"How well were the legal issues of the case identified and discussed during the session?"	1.92	1.50	1.75	1.50	1.67
"Overall, how would you rate the mediation process in your case?"	1.95	1.91	1.81	1.95	1.91
"From this experience, how satisfactory do you think mediation is to resolve other disputes in which you might be involved?"	2.00	1.80	1.85	1.80	1.86
"How efficient was the procedure of court referral and arranging the mediation session?"	1.81	1.45	1.88	1.95	1.77

* "PTY-APP" means "Parties and Insurers–Approved Mediators." "PTY NON" means "Parties and Insurers–Non-Approved Mediators." "ATTY APP" means "Attorneys–Approved Mediators." "ATTY NON" means "Attorneys–Non-Approved Mediators." "OVRL AVE" means "Overall Average."

Although it is difficult to draw any firm conclusions on this small number of mediations, some generalizations from the chart are possibly these: These "scores" are an improvement from the collective scores of prior years; in fact, in all but two questions ("Overall...." and "From this experience") the average scores were better in 2001 than in 2000, and for those questions the numbers were close to last year's. Thus, it appears the parties' and attorneys' views of the program may be improving.

Interestingly, the participants' perceptions of the quality of the mediation and the mediator did not change much depending on whether or not the case settled "at the table." Classed by whether the case settled at the mediation, the evaluations yielded these averages:

EVALUATION QUESTION	CASE DID SETTLE IN MEDIATION SESSION			CASE DID NOT SETTLE IN MEDIATION SESSION		
	PRTY	ATTY	AVE	PRTY	ATTY	AVE
"How was the mediator at remaining neutral?"	1.50	1.29	1.40	1.41	1.53	1.47
"During the mediation session, how was the mediator-- "...at giving you opportunities to express your views?"	1.36	1.32	1.34	1.47	1.42	1.45
"...at understanding your/your client's interests and needs in the dispute?"	1.55	1.29	1.42	1.59	1.72	1.66
"...at allocating appropriate time for the mediation...?"	1.73	1.60	1.67	1.60	1.61	1.61
"...at treating you with fairness and respect?"	1.23	1.16	1.20	1.35	1.32	1.34
"How well were the legal issues of the case identified and discussed during the session?"	1.77	1.42	1.60	1.81	2.00	1.91
"Overall, how would you rate the mediation process in your case?"	1.61	1.46	1.54	2.20	2.45	2.33
"From this experience, how satisfactory do you think mediation is to resolve other disputes in which you might be involved?"	1.50	1.54	1.52	2.50	2.22	2.36
"How efficient was the procedure of court referral and arranging the mediation session?"	1.59	2.04	1.82	1.93	1.72	1.83

As can be seen from these numbers, the parties and insurers were slightly more likely to alter their views on the value of the mediation depending on its outcome, and their variances were quite significant on three of the last four questions. The lawyers were fairly consistent in all but the last three questions.

Another issue is always whether the settlements achieved during the mediations would have eventually occurred anyway, without any mediation or court involvement. This question is asked on the evaluation questionnaires now being used. Nearly ALL participants indicated that the settlement reached either would not have otherwise occurred or would have occurred only later, after the expenditure of more time and money:

“If you reached full settlement, in your view would the case have settled later without mediation?”

Attorneys “Yes”	Attorneys “No”	Attorneys- “Maybe”	Parties/Insurers “Yes”	Parties/Insurers “No”	Parties/Insurers “Maybe”
9/27 = 33%	18/27 = 67%	N/A	5/17 = 29%	12/17 = 71%	N/A

While obviously there is no way of scientifically knowing the answer to that question, these results, from the people most familiar with the case, are impressive indicators of the effectiveness of the mediation.

In addition, participants were asked to state if they thought the mediation saved them time and/or money in resolving the case. The results, shown in the table below, indicate averages between “excellent” and “good.” They were then asked to quantify how much time and/or money was saved by resolving the case when they did. Those “guesstimates” have been averaged; recognizing, however, the non-scientific nature of these figures, the highs and lows were not calculated in the money averages.²

EVALUATION QUESTION	PRTY	ATTY	AVE
“To what extent do you think the mediation saved you money in resolving this case?”	2.41	1.73	2.07
“Please ‘guesstimate’ how much money saved”	\$40,000	\$30,750	\$35,375
“To what extent to you think mediation saved you time in resolving this case?”	1.47	1.52	1.50
Please ‘guesstimate’ how much time saved, i.e. hours of attorney time”	111	104	108

² Money Saved--Attorneys: One figure of \$100,000 and anything under \$10,000 were thrown out, as most responses were between \$10,000 and \$40,000.

Money Saved--Parties/Insurers: One figure of \$100,000 was thrown out. There were no responses under \$10,000.

Time Saved--Attorneys: This average includes a high estimate of 400 hours and a low estimate of 10 hours.

Time Saved--Parties/Insurers: This average includes a high estimate of 500 hours, one low estimate of 16 hours and one low estimate of 7 hours.

Thus, recognizing that these are subjective judgment calls, and that these numbers may be too small to reach a valid conclusion, it appears that mediation "may" provide a more effective opportunity not only to reach settlement, but also to do so early enough to save significantly on both time and litigation costs.

An additional aspect of mediation which continues to be reflected in the evaluation responses is the element of the litigants having an opportunity to "be heard" by a neutral person, and gaining understanding of their opponent's positions and interests in resolving the dispute. This "feel good" element is reflected in the questions evaluating the mediator's treatment of the parties, understanding their "interests and needs" in the case, and the extent to which the legal issues were discussed. These indicators are consistently positive, even when the case did not settle at the table. Thus, it seems to be one of the benefits of mediation.

V. CONCLUSIONS

The conclusions in last year's report continued to apply, sometimes with new twists in 2001:

The mediation program continues to be a **positive force toward settlement**. The past year's statistics indicate that mediation caused or accelerated settlements in a sizeable majority of cases referred. The "effective settlement rate" has gone up and down over the six years of the program, but the overall average is that nearly two-thirds of referrals result in settlements attributable to mediation.

The evaluations continue to suggest that **mediation receives positive feedback**. Even if the case did not settle, the evaluations reflect generally very high averages. Mediation by a trained neutral who listens gives the parties the satisfaction of being "heard" and hopefully, "understood." While not a traditional function or role played by lawyers, this cathartic element is instrumental in bringing parties to the point of willingness to settle. By allowing litigants to try to resolve "their" problem themselves, mediation permits parties to be in control of how their dispute is ended.

A tentative conclusion is that **mediation saves litigants time and money**. While it may be too soon to shout this from the rooftops, at least anecdotally the reports from lawyers and parties tend to overwhelmingly indicate it. Further, the savings "guestimated" are significant.

The court continues to make **relatively few case referrals**. It is disappointing that the program has apparently not been popular with some lawyers, particularly in Omaha, where a majority of the court's approved mediators reside and practice. Some attribute this to the commonly held misconception that the court and/or the state's mediation centers select the mediator for a particular case; this has now been changed so the attorneys select their own mediator, but the earlier perception may persist. Other possible reasons for the low number of referrals are: Mediation is still new and attorneys are not comfortable with it yet; the Nebraska federal judges do not "push" the parties to mediation as some judges do; and there are still relatively few attorneys who are mediators.

The court's program has also been a catalyst for the development of a **growing market of mediators**, something that did not exist at the commencement of the program and was then identified as a goal. Several of the court's approved mediators have a personal following among litigants and a successful mediation practice apart from the cases referred by this court. It is expected this will continue as mediation generally gains favor and familiarity. In addition, more attorneys are taking mediation training through the Office of Dispute Resolution, not only to become mediators, but also to learn how to prepare their clients for mediations and to be an effective advocate for them in mediations. Some of these attorneys have expressed an interest in becoming approved mediators for this court's cases.

VI. FUTURE OUTLOOK

No changes are planned for the program in 2002. The Mediation Plan has been amended to allow greater flexibility for attorneys bringing their cases to mediation and for attorney-mediators. These recent amendments have not yet been in effect long enough to judge their impact on the program.

The court's annual skills workshops will be continued in 2002, and another "Fed/Med" training program for new mediators may be offered if sufficient interest is shown. It is hoped that these educational meetings will contribute to the growth of mediation as a viable alternative to litigation and a reasonable means to resolve disputes.

The court has contributed to the development of mediation as a viable alternative dispute resolution technique in Nebraska. The statistics accumulated over the course of the court's program do demonstrate that mediation is definitely worthy of consideration in civil cases. Whether it continues as a viable force or even expands will depend upon the acceptance of the bench and bar and the continuing efforts of mediators to provide competence and fairness in the mediation process.

APPENDIX

1. EVALUATIVE COMMENTS, 2001
2. EVALUATION QUESTIONNAIRES

EVALUATIVE COMMENTS, 2001

1. PARTIES' COMMENTS RECEIVED ON EVALUATION FORMS

The evaluation forms were distributed to participants in the mediations held through the auspices of approved federal mediators as well as the non-approved mediators. The comments received from the parties and insurance company claims representatives appear below:

In Cases That Did Settle During the Mediation Session (Approved Mediator):

"_____ was excellent - quick study on the law and factual issues, energetic and enthusiastic, capable and very courteous. I've seen dozens of mediators as an in-house litigation manager, but none finer than _____."

"Mediator seemed to assume an overall understanding of law which for myself was uncharted territory! Certainly a level above my experience with these issues. Overall, an interesting process!"

"As Plaintiff, I would have hoped to with jury trial. I was disappointed in the settlement, as I had hoped for more. The Defendant did NOT meet me half-way, and I felt I was doing almost all of the "giving." However, this was not the fault of _____, and it was my decision to settle."

"It took the parties some time to appreciate the other parties interests and issues; however once this happened a settlement in full was the result."

"Should have mediated sooner. Will mediate again."

"_____ was very nice and honest. He really knew his stuff and kept neutral. Thanks again _____."

"We were ready for trial - chances for better verdict but client wanted certainty."

In Cases That Did Settle During the Mediation Session (Non-Approved Mediator):

No comments were received.

In Cases That Did Not Settle During the Mediation Session (Approved Mediator):

"Thanks a lot."

"_____ did a very good job. Having been through numerous mediation sessions, I must say that _____ ranks very high in comparison with other mediators I've used."

“While this mediation was unsuccessful, it was in no way due to the mediator’s efforts. I remain a supporter of the mediation process.”

“Result was disappointing, but that was due to bad combo of emotional plaintiff and an attorney who cannot or will not limit this plaintiff’s unrealistic expectations.”

“Both sides were too far afield on the issues to make this work well. We would have benefitted by better pre-mediation evaluation.”

In Cases That Did Not Settle During the Mediation Session (Non-Approved):

“_____ walked out prior to lunch. It seemed to all of us that he was not intending to mediate a settlement.”

“_____ I do not believe intended to settle on this date.”

2. ATTORNEYS’ COMMENTS RECEIVED ON EVALUATIONS

In Cases That Did Settle During the Mediation Session (Approved):

“Mr. _____ did an excellent job in working with the parties in this case.”

“Realizing that (at least from our side of the table) this was a difficult case to settle/mediate...I felt that the mediator may have extended the discussions with the parties more than necessary to earn a fee that is excessive in Nebraska (\$200/hr.). We mediated for 4 hours and only 4 offers/demands total between the parties were exchanged. That said, I did not know what negotiations were like in the other room and the end result was pleasing to my client.”

“This mediation was not referred by court. The parties agreed to mediation and contacted the court to inquire about suspending the progression order. At that time, the court sent out a reference order. The parties arranged the mediation themselves. Mr. _____’s office was very helpful in that respect.”

“_____ did an excellent job bringing the parties together in a case where I did not think we could settle.”

“I would never mediate a case with a lawyer who was not knowledgeable in employment law (or whatever the subject matter happens to be). As usual _____ did very well!”

“_____ does good work.”

“Appreciate fact we were scheduled very quickly on short notice.”

"This was a business dispute. _____ treated it like a domestic case. We really should have been assigned a mediator with experience in this type of case/area. The mediation would have moved along much faster with a mediator who had experience in a purely commercial case."

"_____ was adept, particularly in understanding the parties' perspectives and what was needed to bring the parties to agreement. In this case, time was not spent on discussing the merits of the case to an extraordinary degree as it was not needed based upon the expertise of the parties involved. Time spent on the disagreements over the relative merits of the case was adequate and I believe greatly contributed to the success of this mediation. (I have not had success in mediating such disputes largely due to this process.)"

"We hated to settle because we felt that we were right, but it was not economically feasible to drag it on, and incur more attorneys fees, and still possibly end up losing because a jury deemed us @ fault."

In Cases That Did Settle During the Mediation Session (Non-Approved):

"_____ is an exceptional mediator. His experience and personality lend themselves well to the process and his non-threatening demeanor puts all parties at ease. He is particularly effective because he does not allow the process to become adversarial."

"_____ is one of the best! He is a real asset to the mediation program."

"_____ did an excellent job of working with us & explaining some of the difficult issues."

In Cases That Did Not Settle During the Mediation Session (Approved):

"Mediation was ordered too late in the process and too close to the trial date. Very insufficient and did not allow enough time to consider the issues."

"Needed more aggressive input (I assume on both sides) - Needs to be more forceful."

"This was a very tough case with the parties far apart to begin with."

"My experience in mediation for this particular type of case is very limited so my ability to provide well reasoned answers is limited. However, I think _____ controlled the session in a positive manner and kept us on line to try to get the matter resolved."

"I think _____'s effective, professional and dignified. I'd recommend him."

"_____ is a great mediator. However, this case could possibly have benefited from having each party present their arguments/case as to the reasons why they think they'll prevail in the initial session where all parties are present. As defense counsel, sometimes it helps for my client to hear out loud why the

other side is so confident of victory and to be confronted with this, i.e., made to feel a little uncomfortable.”

“It was helpful that the mediator knew employment issues, and had good common sense. I’m sure it helped some in the communication because we all spoke the same language, but I think a good lay person w/an understanding of employment issues could also be good.”

“Parties were simply too far apart. Perhaps we can try again after the case has progressed further.”

In Cases That Did Not Settle During the Mediation Session (Non-Approved):

“I put N/A because our mediation was such a failure that it never really started. Generally I have had success w/mediation and I encourage it to my clients; this case, however, was a total and absolute failure.”

“I think IBP did not bring the person with authority. Defendant’s person with authority not present.”

“Mediator was fair and knowledgeable.”

“Not finished.”

“This mediator was not requested & was clearly intimidated by the physical presence of the other parties. I believe this affected the mediation process and was a complete waste of resources. I would not recommend this mediator, nor would I use him again unless ordered by the court to do so.”

“Defendant unrealistic in its approach to mediation.”

“This case did not settle because parties were too far apart. The mediator did a good job – this was not his fault.”

3. LAWYERS’ COMMENTS RECEIVED IN FOLLOW-UP SURVEY

The survey, sent in cases that had settled but not during the mediation session, requested attorneys to comment on the effects of the mediation in their case, as well as their views on "interest-based" mediation. Those comments follow.

Approved: "Because Of":

No comments were received.

Approved: "In Spite Of":

No comments were received.

Approved: "No Effect":

"Fostered discussion regarding inability of defendant to pay any judgment and weakness of plaintiff's claim."

"I am unsure about the effect of mediation on the settlement. The parties were very polarized. The plaintiff made a high demand, the defendants refused to offer anything. Two of the lawyers were motivated to settle. One other lawyer threw up barriers."

Non-Approved: "Because Of":

"After both sides had a chance to listen to the other's view point, we were able to reach a settlement a few months later. Judge Caporale gave great credibility to the process."

"This statement is partially true because of the effects noted below. Both parties were motivated to settle regardless of the mediation, however, feedback from the mediator in private caucus helped the parties evaluate their positions more realistically, and led to concessions by both parties."

"The mediation failed because the other party did not take it seriously. Approx one month after offering \$25,000 at the mediation, they offered us approx 20 x that amt. Thereafter, the case settled quickly. I am not sure why their perspective changed to much."

"The fact that the parties had a chance to discuss each other's positions and to see each other face-to-face. I believe both parties had a better understanding of the other's position and after the mediation both were more sincere about settlement."

"I think the mediation was an aid to leaving parties better understanding of strengths and weaknesses and contributed to resolution."

"Mediation got my client thinking, it just took him a lot longer to weigh his options than mediation allowed. It would have taken a lot more to settle without mediation."

Non-Approved: "In Spite Of":

“Defendant took a final position at mediation then increased offer week before trial.”

Non-Approved: "No Effect":

“The mediation was actually premature. Whether it would have had a positive impact if held later is simply speculative.”

“This firm did not represent United Nebr. at the time of the mediation. But I believe Stuckey’s counsel who participated in the mediation concluded that the mediation was conducted too early. We talked about a second mediation, but we were too close to trial at that point.”

“Case did not settle but was dismissed because of another case in state court.”

“Although I originally gave the mediator high marks, it was evident he failed to grasp a fundamental part of our case and signaled his belief my clients were unreasonable in their views. I don’t expect a mediator to decide the law, but I do expect him to understand it. He didn’t, and the mediation was largely a wasted day.”

“Do not believe the mediation had an effect on the settlement or elicited any changes in attitudes or positions. This is not a reflection on the process of mediation, but the result of the “positioning” and “posturing” that took place and repeatedly takes place in cases involving this plaintiff’s attorney.”

“This case was handled by _____ during mediation, later by _____, and finally by me, so I don’t have a good basis for responding.” I can only say I did not discern any effect of the mediation. _____ may be able to give some additional information.”